

JUN 10 2008

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

RAJESH KUMAR,

Petitioner,

v.

**MICHAEL B. MUKASEY, Attorney
General,**

Respondent.

No. 04-76188

Agency No. A78-056-734

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted April 16, 2008
San Francisco, California

Before: **TROTT** and **THOMAS**, Circuit Judges, and **HOGAN**,** District
Judge.

To the extent the court has jurisdiction to review the IJ's determination that
Rajesh Kumar failed to present sufficient evidence to excuse his failure to timely
file his asylum application, 8 U.S.C. § 1158(a)(2)(B), and (D), the IJ's

* This disposition is not appropriate for publication and may not be cited
except as provided by 9th Cir. R. 36-3.

** The Honorable Michael R. Hogan, United States District Judge for the
District of Oregon, sitting by designation.

determination is supported by substantial evidence. See Ramadan v. Gonzales, 479 F.3d 646, 650 (9th Cir. 2007) (discussing jurisdiction to review determinations under Section 1158(a)(2)). In any event, the IJ's adverse credibility determination is supported by substantial evidence. The record contains a statement from Kumar's wife supporting the IJ's finding that Kumar's marriage is a sham. As noted by the IJ, Kumar testified to significant events material to his asylum application that are not corroborated in his application materials or in letters submitted by persons identified by Kumar as having participated in these events. Substantial evidence thus supports the IJ's finding that Kumar is ineligible for asylum. 8 U.S.C. § 1252(b)(4)(B). Kumar is necessarily ineligible for withholding of removal. See Farah v. Ashcroft, 348 F.3d 1153, 1156 (9th Cir. 2003). Kumar's claim under the Convention Against Torture fails because a reasonable adjudicator would not be compelled to find that Kumar would more likely than not be tortured if removed. See 8 C.F.R. § 1208.16(c)(2).

PETITION DENIED.